



**CABLE & WIRELESS**  
USA

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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May 17, 1999

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
Portals II  
445 12th Street, S.W.  
Suite TW-A325  
Washington, D.C. 20554

RE: Comments of Cable & Wireless USA in CC Docket No. 96-128 and File No. NSD-L-99-34

Dear Ms. Salas,

Enclosed please find an original and four copies of Cable & Wireless USA's comments in the above referenced proceeding.

Sincerely,

Brent M. Olson  
Senior Regulatory Counsel  
Cable & Wireless USA

Enclosures (5)

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
**RECEIVED** Washington, D.C. 20554

MAY 17 1999

In the Matter of	)	
<del>FEDERAL COMMUNICATIONS COMMISSION</del>	)	
Implementation of the Pay Telephone	)	CC Docket No. 96-128
Reclassification and Compensation	)	
Provisions of the	)	File No. NSD-L-99-34
Telecommunications Act of 1996	)	

**COMMENTS OF CABLE & WIRELESS USA, INC.**

Pursuant to a Public Notice released on April 15, 1999, Cable & Wireless USA hereby submits comments addressing the issues raised in a petition for clarification filed by the RBOC/GTE/SNET Payphone Coalition ("RBOC Coalition").<sup>1</sup> In its petition, the RBOC Coalition requests that the Commission clarify, on a going-forward basis, which interexchange carrier (IXC) is the party responsible for payment of per-call compensation when a dial-around or subscriber call is made from a payphone. The RBOC Coalition describes the current Commission rule as placing the obligation on the owner of the first switch to which a compensable call is routed from the local network serving a payphone service provider (PSP), unless another carrier expressly assumes responsibility. The RBOC Coalition requests, however, that the Commission "clarify" this rule, on a going-forward basis, and place this burden on the entity identified by the Carrier Identification Code ("CIC") used to route calls from a local exchange carrier's network.

**I. THE RBOC COALITION'S REQUEST CANNOT REASONABLY BE TREATED AS A PETITION FOR CLARIFICATION**

Cable & Wireless USA strongly opposes the RBOC Coalition's request. As an initial matter, we challenge the RBOC Coalition's attempt to frame this request as a petition for clarification. This petition cannot properly be treated as a petition for clarification. First, the

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<sup>1</sup> Public Notice, CC Docket No. 96-128, NSD File No. L-99-34, DA 99-730 (rel. Apr. 15, 1999).

RBOC Coalition's interpretation of the existing rule identifying the carrier responsible for compensation, and thus the basis behind its request for clarification, simply is wrong. Nothing in the existing rule, or in the Commission's statements explaining this rule, remotely suggests that the owner of the "first switch" has responsibility for per-call compensation. Under the Commission's existing rule, each IXC that has switching capability, whether or not that carrier controls the "first switch," is responsible for the calls made from payphones by its customers. Although IXCs with no switching capability are exempted from the responsibility to pay payphone compensation directly to PSPs, such carriers must reimburse the underlying facilities based carrier, if that carrier so requests.

The RBOC Coalition's request necessarily would entail a modification, rather than a mere clarification, of the Commission's existing rule, which, ironically, was already clarified in the Commission's Order on Reconsideration, over two and a half years ago. There is no need for the Commission to issue an additional clarification in this instance. The Commission's existing rule states that "[i]t is the responsibility of each carrier to whom a compensable call from a payphone is routed to track, or arrange for the tracking of, each such call so that it may accurately compute the compensation required by Section 64.1300(a)." 47 C.F.R. § 64.1310(a). In its original Payphone Order, the Commission based its compensation rule on the policy judgment that the primary economic beneficiary of a call made from a payphone should be responsible for paying the requisite compensation to a PSP.<sup>2</sup> Subsequently, in clarifying which IXC is responsible for payment of per-call compensation, the Commission stated that, "a carrier is required to pay compensation and provide per-call tracking for the calls originated by payphones if the carrier maintains its own switching capability, regardless if the switching equipment is owned or leased by the carrier."<sup>3</sup> Thus, reading the rule in the context of this clarification, and guided by the Commission's stated policy in identifying the party responsible for compensation, removes any

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<sup>2</sup> First Report and Order, 11 FCC Rcd at 20585, ¶ 83.

<sup>3</sup> Order on Reconsideration, 11 FCC Rcd at 21277, ¶92.

ambiguity, to the extent that any ambiguity arguably exists, and clearly demonstrates that it is not the carrier with the first switch that is responsible for compensation. Rather, the carrier responsible for per-call compensation is the carrier with switching capability that also is the primary economic beneficiary of the call, *i.e.*, the carrier that retains the caller as its own customer.

Additionally, even assuming *arguendo* that the RBOC Coalition's interpretation of the existing rule is correct, it is difficult, if not impossible, to conceive how that interpretation could be further "clarified" to reinterpret the rule so that the "CIC assignee" would now be deemed the responsible party. This logic borders on the ludicrous and cannot be sustained. Not only does the RBOC Coalition's current interpretation of the rule rest on a faulty premise, its reinterpretation of an already incorrect interpretation must be rejected as absurd. Therefore, at a minimum, the Commission must reject the RBOC Coalition's futile attempt to cast this petition as merely a "petition for clarification" and, instead, treat it as a petition for rulemaking, seeking a change in the current payphone rules.

Refusing to acknowledge the RBOC Coalition's petition as a petition for clarification is not merely an exercise in procedural gamesmanship. Recognizing this petition for what it truly is -- a petition for rulemaking -- highlights the actual significance of its potential impact. While a petition for clarification suggests that whatever action the Commission takes to "clarify" a rule would cause minimal change in the compensation process, a petition for rulemaking properly demonstrates that the action requested would be dramatic, causing significant shifts in burden, change and disruption to an existing, yet still nascent, process. It is in this light that the Commission must view this request by the RBOC Coalition. This request would not merely result in a minor adjustment of the current compensation scheme, causing little substantive impact. Rather, it would severely disrupt the careful balance the Commission has struck in distributing the responsibilities and burdens associated with payphone compensation. In addition, whatever "efficiencies" are arguably and theoretically gained under this proposal, instituting such

a change at a time when carriers are still continuing to learn and adapt to an already complex process is more likely to cause additional confusion and complication.

## **II. AT A MINIMUM, TANGIBLE EVIDENCE OF SHORTFALLS IN COMPENSATION MUST BE PRESENTED BEFORE THE COMMISSION EVEN BEGINS CONSIDERATION OF A RULE CHANGE**

Unless supported by actual evidence, Cable & Wireless USA believes that the RBOC Coalition's request is best viewed as a solution in search of a problem. As noted above, the existing rule is already clear and, as discussed below, this rule strikes the appropriate balance in distributing the burdens associated with implementing and administering a complex payphone compensation scheme among all of the involved parties. The RBOC Coalition has presented no tangible evidence substantiating its claim that PSPs currently are not receiving adequate compensation for calls made from payphones. At a minimum, before the Commission even considers making any change to the existing rule, it must require the RBOC Coalition to produce compelling evidence to support its claim that PSPs are not receiving all of the compensation that they are entitled to. In its petition, the RBOC Coalition merely makes the bald assertion that "Coalition members have found that the amount of compensation received from some of the major interexchange carriers has been from 20 to more than 50 percent less than the amount the Coalition members expected, **based on their own records** [emphasis added]" and "[i]n the case of many smaller IXC's, the shortfall has been even more dramatic -- up to 100 percent of expected compensation." Surely, the Commission must require some submission of actual evidence, rather than unsubstantiated assertions, before even considering whether there truly is a problem that may be alleviated through a rule change.

### **III. THE COMMISSION'S EXISTING RULE ON CARRIER RESPONSIBILITY FOR PER-CALL COMPENSATION STRIKES THE APPROPRIATE BALANCE IN DISTRIBUTING THE BURDENS ASSOCIATED WITH IMPLEMENTING AND ADMINISTERING THE PAYPHONE COMPENSATION SCHEME**

Although Cable & Wireless USA ultimately believes that the best solution to ensure that PSPs are compensated for dial-around and subscriber calls is a caller-pays system, the Commission's existing rule, which places the responsibility for compensating PSPs on IXC's that maintain their own switching capability, strikes the appropriate balance for a carrier-pays system. Cable & Wireless USA acknowledges that PSPs are entitled, under the Commission's rules, to be compensated for dial-around and subscriber calls made from their payphones. Nothing in the Act or the Commission's rules, however, requires or even suggests that the process established to facilitate the receipt of such compensation should impose no burdens on PSPs. To the contrary, the process that the Commission has devised necessarily imposes burdens related to identifying, tracking, and billing for calls made from payphones on all parties involved in the compensation process, including PSPs. Most of the internal systems carriers are using to implement the compensation process have needed to be added, or at least augmented, for carriers to comply with the procedures established under the Commission's payphone compensation scheme. In order to distribute the burdens and costs associated with payphone compensation, the Commission's scheme, legitimately and necessarily, spreads those burdens and costs among the various parties involved in these transactions.

Under the RBOC Coalition's proposal, however, this balance would be severely upset, resulting in a certain subset of IXC's unfairly shouldering nearly the entire burden associated with the compensation process. Not only would these carriers be responsible for identifying and tracking a whole new set of payphone calls, they would also have the additional burden of incurring the responsibility, and any associated liability, for paying for these calls. Significantly, the carriers paying compensation for these calls would not also be the primary economic beneficiary.

As noted above, in its original Payphone Order, the Commission made a policy judgment that the primary economic beneficiary of a call made from a payphone should be responsible for paying the requisite compensation to a PSP. The only exception to this rule is for carriers that do not maintain their own switching capability. The Commission recognized that, in these instances, such carriers do not have control over the facilities necessary to access the information required to track calls made from payphones. Significantly, in allowing for this exception, the Commission did not state that carriers with no switching capability are not the primary economic beneficiaries of calls made from payphones by their customers. Rather, the Commission recognized that the underlying facilities-based carriers that provide service to such resellers could legitimately require these carriers to reimburse them for their payments to PSPs. The Commission should continue to be guided by this same overarching policy in order to ensure that the burdens associated with implementing and administering the payphone compensation process are not unevenly and unfairly shouldered by a single group of carriers.

Unlike the purpose behind requiring facilities-based carriers to pay compensation on behalf of switchless resellers, the RBOC Coalition's request would not place the burden of paying per-call compensation on the carrier that is best able to track calls that originate from payphones *and that are completed*. Just as switchless resellers are unable to directly track calls made from payphones by their customers, IXC's that have been assigned CICs do not necessarily have the ability to track calls made from payphones by customers of other IXC's to determine whether those calls are actually completed. For those cases in which the call is made by a customer of a switch-based reseller, the call ultimately will be handled by that carrier. As a result, that carrier, not necessarily the carrier that controls the first switch or the carrier that has been assigned a CIC, will have the information necessary to determine whether the call has been completed or not, and, thus, that carrier will have access to the information necessary to determine whether compensation is owed to a PSP.

Under the RBOC Coalition proposal, IXC's that have been assigned CIC's would be required to act as guarantors for those IXC's with switching capability that have not been assigned CIC's even though those IXC's are better positioned to track and compensate for these calls. The RBOC Coalition argues that this system would be the most fair and administratively efficient. Although that statement may accurately characterize the resulting impact on PSP's, it conveniently neglects to address the substantial and unbalanced impact that this rule would have on the payphone compensation process as a whole as well as on a certain subset of IXC's.

As the Payphone Order makes clear, only those calls that are completed are entitled to payphone compensation.<sup>4</sup> By placing the burden of compensation on IXC's that have been assigned CIC's, such IXC's necessarily would have to assume that all payphone calls that they handle on behalf of other carriers are completed, which would result in overcompensation for PSP's. Additionally, the CIC assignee naturally would seek reimbursement for these calls from the carrier that retains the caller as a customer. The carrier reimbursing the CIC assignee inevitably would request a "true-up" of the amount of compensation it owes (i.e., those calls that were not completed be subtracted from the total number of calls originating from payphones). In order to be made whole, the IXC that has been assigned a CIC would then have to attempt to negotiate some sort of refund from the compensation it already has paid to the PSP since that amount would have been based on the total number of calls originating from payphones, rather than the total number of completed calls. Such a system surely cannot reasonably be described as administratively efficient. By requiring this kind of back-and-forth between parties, more complexity, not less, would be added to the overall process. At best, this would be a zero-sum solution as any efficiencies gained by PSP's would come at the expense of imposing additional burdens on other parties, notably those IXC's that have been assigned CIC's. Certainly, the compensation process as a whole would achieve no overall gain in efficiency. Rather, it is likely

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<sup>4</sup> First Report and Order, 11 FCC Rcd at 20573-74, ¶ 63 (defining "completed call" as "a call that is answered by the called party.").



that imposing this new compensation regime on carriers while they are still attempting to adjust to the existing process would cause at least some of the efficiencies gained over the last two years to be lost.

In reality, this request seeks to require certain IXC's to act as "middle-men" to help PSPs completely avoid a share of the burdens, costs and complications associated with administering and participating in a complex process. The Commission must not and cannot ignore the countervailing burden this request would place on a particular subset of IXC's. Nor can the Commission ignore the incentive for producing overcompensation inherent in the RBOC Coalition's proposal. Importantly, adopting this proposal would do nothing to further the Commission's overarching goal in ensuring that the primary economic beneficiary of a payphone call is responsible for paying compensation to a PSP. Rather, the purpose of this proposal is merely to shift all the burdens associated with compensation collection from PSPs and place them squarely on the shoulders of a particular group of IXC's.

#### **IV. UNDER THE EXISTING SYSTEM, PSPS MAY SEEK ASSISTANCE IN IDENTIFYING IXCS RESPONSIBLE FOR PER-CALL COMPENSATION**

It is important to point out that, under the existing compensation scheme, IXC's responsible for paying payphone compensation are under an affirmative obligation to identify themselves to PSPs. Cable & Wireless USA as well as many other IXC's have fulfilled this obligation and currently are paying millions of dollars in compensation to PSPs on an annual basis. If PSPs believe, however, they are not being adequately compensated for dial-around and subscriber calls, they are not powerless, under the Commission's existing rules. Instead, they are able to take affirmative steps to attempt to identify IXC's that are responsible for per-call compensation. For example, as described in a Bureau-level Order, an IXC is obligated to "indicate, on request by the billing PSP, whether it is paying compensation for a particular 800 number. If it is not, then it must identify the switch-based reseller responsible for paying

payphone compensation for that particular 800 number."<sup>5</sup> In other words, there already is a method in place by which PSPs can seek to identify, with the assistance of other IXC's, the specific IXC's that are responsible for paying compensation to them.

Cable & Wireless USA does not seek to remove its obligation to assist PSPs in this identification process. In fact, Cable & Wireless USA is prepared to assist in this process. Cable & Wireless USA emphatically rejects, however, the notion inherent in the RBOC Coalition's proposal that it, along with other IXC's that have been assigned CICs, must instead assume full responsibility and liability for paying compensation that is best left the responsibility of the carriers that are the primary economic beneficiary of those calls and that are in the best position to track the completion of those calls. As the Commission's rules appropriately recognize, all carriers with switching capability are in the best position to do so and thus the Commission should not accept the RBOC Coalition's proposal to further narrow that set of carriers that must assume responsibility for compensation. The Commission should instead reaffirm that all carriers with switching capability have the responsibility to pay compensation for calls made by their customers.

As noted above, this issue already has been debated and decided. All IXC's with switching capability are liable for per-call compensation to PSPs. This is not contingent upon whether a particular IXC with switching capability also controls the first switch after a payphone call is handed off by a LEC or whether a particular IXC has been assigned a CIC. It is merely contingent upon which IXC is the primary economic beneficiary of a call placed from a payphone. Clearly, that is the IXC that has the direct relationship with the customer placing the call.

The payphone compensation scheme established by the Commission is still a relatively new and complicated process. There can be no reasonable expectation that the process would be perfect from day one. As more time goes by and as parties become more familiar with the

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<sup>5</sup> Memorandum Opinion and Order, CC Docket No. 96-128, DA 98-642, ¶ 38 (rel. Apr. 3, 1998).

compensation process, shortfalls in compensation, to the extent that they actually exist, should be more easily accounted for and rectified. The answer now, however, is not to make a premature change in a newly-created process that results in additional layers of complexity and causes a substantial shift in burdens in order to address what should be a temporary problem, if it is one at all.

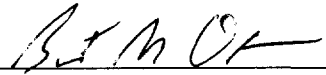
## **V. CONCLUSION**

For the reasons set forth above, Cable & Wireless USA respectfully requests that the Commission reject the petition filed by the RBOC Coalition and reaffirm its existing rule requiring all carriers with switching capability to be responsible for paying per-call compensation to PSPs.

Respectfully submitted,

CABLE & WIRELESS USA, INC.

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